

15.11.07      07.2.08      07.2.08      14.2.08      17.2.08

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

**WRIT PETITION NO. 1534 OF 1999.**

IN THE MATTER OF :

An application under Article 102 of the  
Constitution of the People's Republic of  
Bangladesh.

And

IN THE MATTER OF :

Bangladesh Legal Aid And Services  
Trust (BLAST) and others....Petitioners

-Vs-

Bangladesh and others.....Respondents.

Mr. Ruhul Quddus with

Mr. M. A. Mannan Khan with

Mrs. Amatul Karim, Advocates

.....for the Petitioners.

Mr. Mahmudul Islam with

Mr. M. A. Hannan, Advocates

.....For the Added Respondent No.5.

Mr. Md. Abdul Quadir Talukder,

.....For the Respondent nos. 2 & 4,

**Heard on 14.08.07, 24.09.07,**

**01.10.07, and 02.10.2007.**

**Judgment on 15.11.2007.**

Present:

**Mr. Justice Tariq ul Hakim.**

and

**Mrs. Justice Farah Mahbub.**

**Farah Mahbub, J:**

In this application under Article 102 of the Constitution a Rule Nisi has been issued calling upon the respondents to show cause as to why the impugned action of RAJUK publishing auction notice in the Daily Sangbad dated 22.4.1999 inviting tenders from purchasers for sale of commercial plot no.38-A at Gulshan Second Circle (Annexure-D) should not be declared to have been passed without lawful authority and is of no legal effect,

Short facts relevant for the purpose of disposal of the Rule, are that the petitioner no.1 Bangladesh Legal Aid and Services Trust (in short BLAST) earlier moved applications as public interest litigation invoking legal rights of the disadvantaged, disabled and marginalized segment of the society and has also preferred the instant writ petition on behalf of the petitioner nos. 2-4 of the writ petitioner No.2, Mrs. Shamsun Nahar Ahmed, wife of Late Rafique Uddin was an allottee of plot no. 13-B, CWA, road No. 35, Gulshan Model Town, Dhaka by the then Dhaka Improvement Trust (in short, DIT) measuring 14 Katha 5 chattaks for residential purpose and accordingly a lease deed was executed between the parties

concerned on 27.09.1963 for a period of 99 years (Annexure-A). The petitioner no. 3 Mr. Abu Taher Miah was allotted plot no. 36 Road No. 46, Gulshan Model Town, Dhaka on 2.8.1978 by the DIT measuring 7 Katha 5 Chattaks for commercial-cum-residential purpose and a lease deed was also executed between the parties on 28.04.79 for a period of 99 years. The petitioner no 4. Dr. K M Maqsudur Rahman was allotted plot no. 34, road No. 46, Gulshan Model Town Dhaka on 26.4.77 by the then DIT which was subsequently transferred to his wife. A lease deed for 99 years was accordingly executed between the wife of the petitioner and the DIT on 3.9.77. On 11.10.1995 the wife of the petitioner transferred the said piece of land to her son and daughter who duly authorised the petitioner to represent their case by executing a general power of attorney on 6.1.96 (Annexure A2, A3 and A4 respectively). It has been alleged by the petitioners that the Rajdham Unnayan Kartipakha (in short, RAJUK) the successor of DIT had earmarked an open space in the lay out plan, provided to the present allottees the petitioner nos. 2-4, along with road No. 45 and 35 as a car park area for the benefit of the allottees as well as the residents of the said locality. But the respondent No. 2, RAJUK most illegally and without lawful authority has revised the said lay out plan and converted the car parking area into commercial plots by dividing it

into plot nos. 38A, 38B, 38C, 37A, 36A, 35A and 34A and have called for an auction by publishing in the daily Sangbad on 20.04.1999 to lease out plot no. 38A measuring more or less 7 kathas to the bidders for construction of high rise building (Annexure-D). It has also been stated that the commercial buildings so have been erected by the petitioners in their respective plots were rented out to the garments manufacturers and those buildings are close to the said car parking area. In the stated position if the auction by RAJUK is materialized then commercial buildings will be constructed in the said area without keeping any space in between the buildings. Thus, will completely shut off the free access of light and air being enjoyed by the said plot owners. It has also been alleged that by the said impugned auction the respondent no. 2 has seriously prejudiced the right of the petitioners and the public in general to use the said area as car park for the RAJUK is not authorised to change the characteristic of the said area inasmuch as it is a part of the master plan of Gulshan Model Town. It has further been stated that in the master plan of 1995-2015 the car park area is preserved and developed for the ever increasing multi-storied development in the commercial area. Hence, RAJUK acted in violation of the master plan for not complying with the procedures as provided under sections 38, 45, 52 and 74 of the Town improvement Act 1953

(hereinafter referred to as the Act) Lastly, it has been stated that the petitioners nos. 3 and 4 since execution of their lease agreement with RAJUK have used the facilities of the said car park area and have constructed their multi storied building keeping in mind the earmarked car park area adjacent to their allotted plot hence, they have acquired a vested right over said car park area which the respondent cannot abolish or deny.

The respondent nos. 2-4 the RAJUK made appearance by filing affidavit in opposition and supplementary affidavit to the affidavit-in-opposition contending, inter alia that the petitioner no. 1 has no locus standi to file the present writ petition as it is not a person aggrieved in view of the facts and circumstances of the case. It has also been stated that the petitioner nos. 2, 3 and 4 have been allotted plot nos. 13B, 34 and 36 situated at Road nos. 35 and 46 and accordingly have every right to use those road situated in front of their respective plots and that plot no. 38A of road no. 45 is far away from the respective plots of the petitioners. It has also been stated that as per the provision of the Act, 1953 car park space is required to be constructed on the ground floor of any residential building and no car park space is allowed in from of the road of any residential building. As such the petitioners have got no legal right to prefer the instant writ petition. It has further been contended that in the master

plan the plot in question or its adjacent land has not been earmarked for car park space. Rather, in the original layout plan the then DIT kept vacant space in the southern part of plot nos. 37 and 38 for construction of cinema hall and for which a vacant space was kept for car park in the southern part of plot nos. 34, 35 and 36. Later, RAJUK in its general meeting held on 16.10.1991 revised the said lay out plan and divided the said plot into commercial plots being plot nos. 38A, 38B, 38C, 37A, 36A, 35A and 34A. In its affidavit RAJUK has further contended that under the Act 1953 it has every right to revise the lay out plan as per the requirement of RAJUK to facilitate the use of RAJUK's land and the petitioner nos. 2-4 having executed lease deeds conceding the said authority of RAJUK are now stopped from challenging the auction to lease out plot 38A at road no.45 for construction of commercial building. It has also been contended that petitioner no. 3 Mr. Abu Taher Mia earlier filed Writ Petition no. 688 of 1999 challenging the auction notice on 18.4.94 to lease out plot no. 36A of road no. 45 and petitioner no. 4 and others preferred writ petitioner no. 298 of 2001 with regard to plot no. 38B, 38C, 37A, 36A, 35A and 34A more or less on the similar grounds. In writ petition no. 68 of 1999 the Rule was discharged by this Court on 14.7.99 which was ultimately upheld by the apex court as reported in 6 MLR(AD) 68. In writ petition no. 298 of 2001 the

petitioner no. 4 having entered into a compromise agreement with one Borak Real Estate Ltd. dated 27.6.01 the Rule was discharged for non-prosecution vide order dated 3.7.01 (Annexure-3). Moreover petitioner no 2 has been allotted a residential plot. Hence, the petitioner nos. 2-4 are not at all aggrieved persons within the meaning of Article 102 of the Constitution. Rather with ulterior motive and on false plea they have preferred the instant writ petition to use the land of RAJUK for car park which is illegal and unlawful.

The added respondent no. 5 entered appearance by filing affidavit-in-opposition contending, inter alia, that the petitioner no. 1 failed to assert how it has been aggrieved within the meaning of Article 102 of the Constitution when it is actually posing the so called cause of the petitioner nos. 2-4 who are rich and highly established persons in the society. Also, the petitioner nos. 2-4 being the residents of Gulshan Model Town there is no reason whatsoever not to approach the court in individual capacity and that they are not so disadvantaged people for which petitioner no. 1 was needed to come forward to vouch their case. It has further been contended that the said petitioner nos. 2-4 are bound by the terms and conditions of the lease agreement and for violation of which they can redress their grievance in a proper forum of law but not under writ jurisdiction

since no legal right or interest, has accrued upon them to challenge the decision of RAJUK with regard to auction of property owned by RAJUK. It has also be stated that in the master plan RAJUK his not specified the plot in question as car park rather in the subsequent lay out plan the disputed plot was shown as car park. Later, considering the commercial need RAJUK decided to divide the disputed plot into plot nos. 38A 38B and 38C having been empowered by law. It is also stated that the respondent no.5 is a bonafide purchaser of the property in question for valuable consideration through open public auction and as such has legitimate right and expectation to have the lease agreement executed by RAJUK in his favour on fulfillment of the terms and conditions of allotment letter,

Mr. Md. Ruhul Quddus the learned Advocate appearing with Mr. M. A. Hannan Khan and Mrs. Amatul Karim the learned Advocates on behalf of the petitioner submits that in the approved lay out plan, provided to the petitioner nos. 2-4 (Annexures B-B1) the authority had earmarked an open space along with road no. 45 and 35 as a car park. But the respondent no. 2 the RAJUK most illegally revised the said lay out plan from the original plan of Gulshan North Commercial area converting the said area into commercial plot and called for auction to lease it out for construction of high rise commercial buildings. Referring to the decision of the

case of the case of Sharif Nurul Ambia-vs-Deputy Commissioner and others reported in 58 DLR (AD), 253 the learned Advocate further submits that the lay out plan being a part of master plan the respondent no. 2 was required to comply with the procedures as provided under section 38, 45 52 and 74 of the Act, the RAJUK having converted the car park space to commercial plot without observing the said procedures calling auction to sale the said property for construction of commercial building is liable to be declared to have been passed without lawful authority. Relying upon the decision of the case of M Saleem Ullah, Advocate and others-vs-Bangladesh and others reported in 55 DLR, I the learned Advocate lastly contends that if the respondent no.2 is allowed to proceed with the unlawful and arbitrary decision it will cause serious environmental hazard in the respective area as it will invite more commercial activities and shall create additional car park problem. Accordingly, the said auction notice is required to be declared to have been made without lawful authority and is of no legal effect.

Mr. Md. Abdul Quadir Talukder, the learned Advocate appearing for the respondent nos. 2-4 contends that the petitioners are not the aggrieved persons within the meaning of Article 102 of the Constitution for in a rule of mandamus they are required to show that their claim is rooted in a statute or statutory rule which the failed

to show. In the instant case, the learned Advocate submits, the petitioner nos. 2-4 have been allotted different plots situated in road no. 35 and 46 with duly registered lease deed with the facilities to use the said roads which are available in front of their respective plots. Whereas the plot in question is far away from road no. 35 and 46 and RAJUK having been authorised to allot the said plot in question in accordance with law the petitioners cannot challenge the said auction notice on the plea that in the lay out plan the said property was earmarked for car park area. He further submits that RAJUK has every right to revise any of its lay out plan to meet up the exigencies. In the present case also considering the present need RAJUK revised its lay out plan and changed the said plot along with other adjacent plots into commercial plots which were earlier earmarked for construction of cinema hall. Hence, question of violation of the provisions of the Town Improvement Act, 1953 does not arise as evidently those provisions are applicable relating to change of master plan. Drawing attention to Annexure 2(1) of the supplementary affidavit-in-opposition the learned Advocate lastly submits that challenging the auction of the plot no. 38B, 38C, 37A, 36A, 35A and 34A the petitioner no.4 preferred writ petition no. 298 of 2001 on the same plea and ultimately upon entering into a compromise agreement with the highest bidder the said petitioner

prayed for non prosecution and accordingly the Rule was discharged. Further, the petitioner no. 3 challenging the auction notice of plot no. 36A preferred writ petition no. 688 of 1999 which was also discharged by this hon'ble court and was ultimately upheld by the apex court reported in 6 MLR(AD) 68. The same set of petitioners are now posing as the aggrieved persons for challenging the auction of the plot no. 38A which on the stated facts clearly goes to depict their ulterior motive to grab the property of RAJUK on some frivolous and Vexatious ground. Hence, he contends the Rule should be discharged with costs.

Mr. Mahmudul Islam the learned Senior Advocate appearing with Mr. Md. A. Hannan, the learned Advocate on behalf of the respondent no. 5 the allottee terming the petitioner no. 1 as a busy body submits that the instant writ petition cannot be a public interest litigation in its nature and scope. Further, he submits nowhere within the four corners of the writ petition the said petitioner has made any specific assertion as to how it has been aggrieved under Article 02 of the Constitution by agitating the cause or rendering legal aid to, petitioner nos. 2-4 who are affluent and highly established persons in the society. Drawing further attention to clause 27 of the lease deed Annexures-A1 A2 and A3) Mr. Islam next submits that RAJUK has exclusive right to use its land in the neighborhood in any manner in

accordance with law and keeping in view of the commercial need RAJUK converted the plot in question into commercial plot. The said decision cannot be said to have violated the legal light of the petitioner nos.2-4 or cause environmental hazard. The learned Advocate next contends that admittedly the master plan gives general guide line providing long term strategy for development of Dhaka Metropolitan area and in order to change the said plan procedures provided under the Act are required to be complied with. Whereas, lay out plan gives demarcation of area in more specific manner which is revisable by RAJUK from time to time keeping in view of the demanding situation. He further submits that the decisions so relied upon by the petitioners have no manner of application in the present case as in the said case there has occasioned change of master plan and violation of specific direction given by the government to Dhaka City Corporation as an agent of the government to act on its behalf. Further, in view of the decision of the apex Court in 6 MLR(AD) 68, Mr. Islam, submits, it is clear that change of layout plan is not a change of master plan and RAJUK is competent to change lay out plan without going through the formalities as are required in case of change of master plan. Lastly, Mr. Islam submits that respondent no. 5 is a bonafide auction purchaser depositing security money of Tk. 15,00,000/- and the

property has been allotted to him vide memo dated 9.5.99 (Annexure-4). Hence, he has a legal right to have the lease agreement executed upon paying the balance amount of the bid money.

Refuting the contention of the respondents that petitioner no. 1 has no locus standi in the matter Mr. Quddus submits that the phrase "locus standi" extends to anyone who is not a mere busy body but is coming to the court on behalf of the public at large. In the present case, he submits, since the petitioner no.1 is espousing the rights of the petitioners and the public in general to use the said property for car parking as such it has locus standi in the matter in dispute.

Heard the learned Advocate, perused the application, the impugned auction notice and other annexures so annexed thereto, the supplementary affidavit, the affidavit-in-opposition and the supplementary affidavit to the affidavit-in-opposition.

Admittedly the petitioner nos. 2, 3 and 4 have been allotted plot no. 13B at Road No. 35, plot no. 36 at Road no. 46 and plot no. 34 at Road no. 46 of Gulshan Model Town and accordingly respective lease deeds were executed between the concerned parties (Annexures A, (A1 and A2). It is the claim of the petitioners that they bought the said properties keeping in view of the utility of car

parking area lying adjacent to their respective commercial and residential plots as was shown in the lay out plan (Annexure B and B-1). However, while perusing those Annexures no such lay out plan is found to have been annexed.

The phrase “lay out plan” has not been defined by the legislature in the Act, 1953. The master plan the Dhaka Metropolitan Development Plan 1995-2015 which was published in volume I and II in the official gazette on 04.08.1999 is also silent in this regard. The Dhaka Metropolitan Plan is comprised of three components; a) structure plan b) Urban area plan; 3) detailed area plan However, with regard to ‘detailed area plan’ RAJUK contends that it has not yet been published in the said Plan it has also been stated “Each component is designed to address a particular planning requirement. The planning outputs are not a single land-use master plan as was the Dhaka Master Plan prepared in 1958. For example, the plan does not specify detailed plan by plot land-use zoning, except in particular instances where it is deemed relevant or appropriate at the level of the Detailed Area Plans.” The said master plan includes planning of areas along with proposed drainage system, water supply, electric supply system, telecommunication, as supply etc. In other words, it depicts the guide lines the metropolitan and urban area plan of Dhaka However, in the Dhaka Metropolitan Development Plan

Volume-II: Urban Area Plan (1995-2015) some issues and problems have been identified. But besides this nowhere within its four corners the lay out plan has been identified as part of master plan. Accordingly, it is clear that lay out plan is not part of master plan.

In the case of Sharif Nurul Ambia, 58 DLR (AD,) 253 as relied upon by the petitioners the fact was that a plot situated at Bangabhavan Avenue, Ramna, Dhaka was handed over to the Dhaka City Corporation to construct public car parking place. But in violation of the instruction of the government Dhaka City Corporation started to construct shopping complex. In the Dhaka Metropolitan Development Plan, Urban Area Plan Volume-II there also appears a recommendation not to construct multistoried shopping complex in the said part to reduce traffic concentration. Keeping in view of the said violation of instruction of the government the apex court observed:

“The High Court Division, as it appears, fails to consider that in the master plan the respondent no.2. considering many factors, reserved the plot in question for public car parking center and the respondent no.1 did not deny the specific assertion of the appellant, that the plot in question was handed over to it on 8.9.97 for construction of public car parking place and that the respondent no.1, even

though got possession on 8.9.97 for establishing car parking centre therein immediately took decision to hand over the same to the respondent no.5 for construction of multi storied shopping complex and subsequently, started construction of multi storied shopping complex thereon without amendment of the master plan from the respondent no.2 and further the respondent no. 1, before starting construction did not even care to get the building plan approved.

In the present case, the factual position is that no detailed plan in respect of Gulshan area has been shown in the master plan being car marked as car park area. Rather, it is in the lay out plan prepared on 25.7.1981 wherein the same was ear-marked for cinema hall and car park on southern space of plot no.34 and 37. Hence, the said decision being clearly distinguishable in the present case cannot be applicable. In the instant case, the original lay out plan was prepared in the year 1973 and was subsequently revised by RAJUK in the year 1979 wherein a vacant space adjacent to plot nos. 38, 37, 36, 35 and 34 was shown but the same Was not earmarked for car parking. It also appears therefrom that the respective plots of the petitioners are far away from the plot in question. Further revised lay out plan was prepared on 25.7.1981 where a space was ear marked for cinema hall covering a portion of plot nos. 37 and 38 for which a

vacant space was kept for car park in the southern part of plot nos. 34, 35 and 36. Later, the said layout plan was again revised and approved by RAJUK on 12.10.1991 where the committee approved to change the space of cinema hall and car park into commercial plots being nos. 38A, 38B, 38C, 37A, 36A, 35A and 34A (Annexure-C) Lastly RAJUK revised the said lay out plan on 28.11.2000 and approved plot no. 38A as commercial plot and the rest for car park (Annexure-4). In this regard, submission of the petitioners is that such conversion has been done in violation of the provisions as provided under section 38, 45, 52 and 74 of the Town Improvement Act, 1953. As such let us have a look at those provisions of law, as have been quoted below:

“38. When improvement Scheme may be framed:-

Whenever it appears to the Kartri-pakkha, whether upon an official representation make under section 43 or without such a representation,-

- (a) that any buildings in any area which are used or are intended to be use as dwelling places, are unfit for human habitation or
- (b) that danger to the heath of the inhabitants of building in any area, or in the neighbouring buildings; is caused by-

- (i) the narrowness, closeness and bad arrangement and condition of streets or buildings or groups of buildings in such area, or
- (ii) the want of light air, ventilation proper conveniences in such area; or
- (iii) any other sanitary defects such area, or
- (c) that for the purpose of-
  - (i) providing building sites, or
  - (ii) developing and improving any area, or
  - (iii) remedying defective ventilation, or
  - (iv) creating eating new, or improving existing, means of communication aid facilities for traffic, or
  - (v) affording better facilities for conservancy, it is expedient to lay out new streets or to alter existing streets (including bridges, culverts and cause-ways), or
- (d) that it is necessary to provide in any area, parks open spaces; playgrounds or similar amenities, or
- (e) that it is expedient and for the public advantage to provide-

- (i) housing accommodation, or
- (ii) buildings for public use and convenience, or
- (iii) an adequate water-supply, or
- (iv) a drainage and sewerage scheme,

The kartipakkha may pass a resolution to that effect and may then proceed to frame an improvement scheme.

**45. Preparation, publication and transmission or notice as to improvement schemes and supply of documents to applicants.-** (1) When for any area within the City or Municipality any improvement scheme or re-housing scheme has been framed, the Kartipakkha shall prepare a notice, stating-

- (a) the fact that the scheme has been framed.
- (b) the boundaries of the area comprised in the scheme,
- and(c) the plea which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire and of the land in regard to which it is proposed to recover a betterment fee, may be seen at reasonable hours.

(2) the kartipakkha shall-

- (i) cause the said notice to be published weekly for three consecutive weeks in the Official Gazette and in local

newspapers, with a statement of the period within which objections will be received, and

- (ii) send a copy of the notice to the Mayor of the Corporation or Chairman of the Paurashava.
- (3) The Chairman shall cause copies of all documents referred to in clause (c) of sub-section (1) to be delivered to any applicant on payment of such fee as may be prescribed by rule made under section 152.

52. Alteration of improvement scheme after sanction- At any time after improvement scheme or re-housing scheme has been sanctioned by the Government and before it has been carried into execution, the Kartipakkha may alter it:

Provided as follows:-

- (a) if any alteration is estimated to increase the estimated net cost of executing a scheme by more than five percent Of such cost, such alteration shall not be made without the previous sanction of the Government:
- (b) if any alteration involves the acquisition, otherwise than by agreement, of any land the acquisition of which has not been sanctioned by the Government, the procedure prescribed in the foregoing sections of this

Chapter shall, so far as applicable, be followed, as if the alteration were a separate scheme;

- (c) if owing to the changes made, in the course of a scheme any land not previously liable under the scheme to the payment of a betterment fee, becomes liable to such payment, the provisions of sections 45, 48 and 49 shall, so far as they are applicable, be followed in any such case.

74. Publication of Master Plan.- (1) When the Government approves the Master Plan submitted under section 73, it shall announce the fact by notification and the publication of such notification shall be conclusive evidence that the master Plan has been duly made and approved, and thereafter it shall be unlawful for any person to use any land for any purposes other than that laid down in the master Plan, unless he has been permitted to do so under section 75.

- (2) The Kartipakkha may, from time to time, with the approval of the Government and the Government may at any time, amend or alter any specific provision of the Master Plan. Any such amendment or alteration shall be published in the Official Gazette.

- (3) All future developments and construction, both public and private, shall be in conformity with the Master Plan or with the amendment thereof
- (4) The Master Plan, or an amendment thereof shall neither before nor after it has been approved, be questioned in any legal proceedings whatsoever and shall become operative on the day it is approved by the Government and published in the Official Gazette.”

On perusal of the same it is apparent that those provisions have no role to play in connection with revision or alteration of any lay out plan. Rather, those are required to be complied for change of master plan not lay out plan. Hence, the provision of compliance of those provisions for conversion of lay out plan into commercial plot fails to stand. In the cause of M.A. Taher Mia-Vs-Bangladesh and others in W.P. no. 688 of 1994 preferred by the present petitioner no. 3 the High Court Division observed.

“Our view is that the master plan may provide for open space, parks, lakes and other public facilities but it does not provide for open space to be used for car park. Such facilities as car park is provided by the developing authority of a residential area and as a part of a lay out plan, and this lay out plan may be changed by RAJUK in accordance with the relevant law,

but it does not require sanction of the Government under Section 74 of the Town Improvement Act, 1953 which relates to master plan as different from the lay out plan.”

The said decision of the High Court Division was approved by the Appellate Division in the case of M.A. Taher Miah-vs-Government of Bangladesh and others reported in 6 MLR(AD), 68 observing:

“On facts of this case it is found that in creating plot no. 36/A only lay out plan was changed and RAJUK in its meeting as noted above took decision for conversion of open space into a residential-cum-commercial plot. Only in the case of change of master plan RAJUK is under the mandate of section 74 of the Act to take approval of the Government to alter at any time any specific provision of the master plan and such amendment or alteration is to be published in official gazette. Admittedly in this case no master plan was altered. The petitioner also had no locus standi to challenge the amendment of lay out plan as has been done in this case for the reason that by allotment of plot no. 36 neither any legal nor constitutional rights accrued to him in respect of the space meant for car park.”

In agreement with the said observations we are also of the view that RAJUK being authorised by law has power to revise its lay out plan for which compliance of sections 34, 45, 52 and 74 of the Act is not required.

Examining the case of M. Salimullah, Advocate and others-Vs-Bangladesh and others reported in 55 DLR I it appears that the government of erstwhile East Pakistan developed a vast area of Mirpur into residential plots under the master plan approved under the Act, 1953 with a park popularly known as “Lal Math.” The cause of action arose when a portion of the said park was converted into a community centre under the revised lay out plan. In the present case, the land in dispute was neither earmarked in the master plan as open-space nor it was earmarked in the original lay out plan for car parking. In the subsequent revised plan RAJUK earmarked a portion of plot nos. 34, 35 and 36 for cinema hall and car parking and subsequently by revising the earlier lay out plan it decided to divide those plots into commercial plots. Since, it has been found that lay out plan is not part of master plan and since the petitioners could not show violation of any legal rights or interest accrued upon them hence the said decision has no manner of application in the present case. Accordingly, in view of the observations and findings made above we are of the opinion that conversion of plot no 38A into

commercial plot being part of lay out plan is declared to have been made in accordance with law.

As to the question of open space for car park in the Gulshan Area for free traffic concentration it appears that the words “open space” has been defined in the Dhaka Metropolitan Development Plan as “Any portion of a zoning plot essentially free of structures that serves the purpose of visual relief and buffering from building and structural mass. These areas may be privately or publicly owned and may or may not be accessible to the general public. Open space includes, but is not limited to parks, playgrounds, play fields, botanical gardens, fountains, reflecting pools and other bodies of water, walkways and non buildable rights-of-way. In determining whether an area is open space, the following shall apply:

- (a) It shall be unobstructed from its lowest level to the sky, except for natural vegetation, roof eaves and permitted roof overhangs.
- (b) It shall be at finish grade unless otherwise specified in the chapter.
- (c) It shall not be used for parking, maneuvering of vehicles, or storage of equipment or refuse.
- (d) A required side, front or rear yard may be considered open space.”

From the above particularly in clause (c) of the said definition it clearly appears that open space cannot be used for parking of vehicles. It is also apparent from above that the scheme of open space conceived by RAJUK in its Dhaka Metropolitan Development Plan 1995-2015 does not tally with the proposition of the petitioner to keep open space for car park. However, it is found from the record that RAJUK has further revised the layout plan incorporating other adjacent plots being plot nos. 38B, 38C, 37A, 36A and 34A for the purpose of car parking. As such, it cannot be said that RAJUK did not consider the importance of the car park at the said commercial area of Gulshan North circle. In view of the above this court finds that the petitioners have failed to show that conversion of plot no. 38A into commercial plot will delimit the area of open space earmarked for car park and thus, will cause environmental hazard in the respective locality.

As to the locus standi of petitioner no. 1 it has been claimed that it has sufficient interest in the matter in dispute hence, is qualified to be a person aggrieved and as such, it can maintain an action for judicial redress on the ground of violation of law and on environmental issue. However, the words "sufficient interest" will essentially depend on the co-relation between the matter brought

before the court and the person who is bringing it. It is, therefore, the cause that the applicant espouses which will determine whether the applicant has the competency to claim a hearing or not. If he espouses a purely individual cause, he is a person aggrieved personally. If he espouses a public cause involving public wrong or public injury, he need not be personally affected. In the present case, the locus standi of the petitioner no 1 has been put under challenge to the extent of its sufficiency of interest, its bonafides and appropriateness for seeking relief invoking constitutional jurisdiction of the High Court Division under Article 102 of Constitution. In the writ petition the petitioner no.1 is espousing the cause of the petitioner nos. 2-4 who are affluent residents of Gulshan and have enough money to seek their own redress. Further, the cause which the petitioners have espoused is the conversion of car parking area into commercial plot, earmarked in the lay out plan and thereby claiming that it will cause environmental hazard by creating more traffic concentration. However, it has already been observed above that the petitioners have failed to show any breach of public duty resulting in violation of collective rights of public at large or that there is any public wrong or public injury or even violation of law by RAJUK by inviting auction to lease out the land in question for construction of commercial building. Since the petitioner no.1 has

approached the Court for redress of private injury couched with public injury and having failed to show that the impugned action of RAJUK is causing environmental hazard in the said locality hence, it has no locus-standi to move the High Court Division under Article 102 of the Constitution of Bangladesh.

As to the locus standi of the petitioners nos. 2-4 it is found from record that the petitioner no. 2 has been allotted a residential plot being no. 13-B which is situated far away from the plot in question. Hence, she has no locus standi to challenge the commercial use of car park of plot no. 38A. In fact, the same plea was taken by the Petitioner no.3 in connection with plot no. 36A and challenged the decision of RAJUK taken in its general meeting held on 16.10.1991 in Writ Petition No.688 of 1994 which was turned down by this court by discharging the Rule on 14.7.1999. In Writ Petition No.298 of 2001 the present petitioner no. 4 also challenged the auction sale of plot nos. 38B, 38C, 36A, 35A and 34A on similar contentions and subsequently having entered into a compromise agreement with the higher bidder of the said plots the said Rule was discharged for non-prosecution on 3.7.01. In the instance case, the plot in question e.g. 38-A is the product of the decision of RAJUK taken on 16.10.1991 the legality of which has already been settled by the High Court Division and the Appellate Division by declaring the

said conversion lawful and as such there remains no ground for further interference. Furthermore, they have failed to show that they have a legal right rooted in the statute which has been violated without lawful authority while converting the car park area into commercial area. In such circumstances, it is held that the petitioner nos.2-4 also have no locus standi to ask for cancellation of the auction sale on the ground of keeping the said property as car parking area.

In view of the facts, circumstances and findings made hereinabove and also in view of the decisions given in Writ Petition no. 688 of 1994 and the same having been affirmed by the Appellate Division reported in 6 MLR(AD)68 we find no merit in this Rule.

In the result the Rule is discharged without any order as to costs.

**Farah Mahbub.**

**Tariq ul Hakim, J:**

I agree.

**Tariq ul Hakim.**

A.Begum/07.02.08

Read by:

Exmn. By: